Americare-New Lexington Health Care Center *and* Bus, Sales, Truck Drivers, Warehousemen and Helpers, Local Union No. 637, affiliated with the International Brotherhood of Teamsters, AFL–CIO. Cases 9–CA–29550 and 9–CA–30063

April 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The primary issue presented for Board review in this case is whether the administrative law judge correctly found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Union for a continuous full year after a majority of the Respondent's unit employees voted in a decertification election for continued representation by the Union.[1] The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions, as further discussed below, and to adopt the recommended Order as modified.

After a majority of unit employees voted for the Union in an initial representation election, the Board issued a certification of representative on September 3, 1987. The parties negotiated a collective-bargaining agreement, which was effective from May 1, 1988, to April 30, 1991. A decertification petition was filed in February 1991. The Union won the election.

On March 22, 1991, the Board issued a certification of representative to the Union based on the results of the decertification election. On May 2, after one bargaining session, the Respondent withdrew recognition from the Union. The Union filed an unfair labor practice charge alleging an unlawful refusal to bargain. By letter dated June 24, the Regional Director for Region 9 advised the Respondent that he intended to issue complaint unless the Respondent agreed to, inter alia, recognize the Union and, upon request, meet and bargain in good faith. The Respondent executed a settlement agreement which the Acting Regional Director approved on July 18.

Negotiations between the parties resumed on August 29. Bargaining continued until March 26, 1992, when the Respondent again withdrew recognition from the Union. The Respondent acted in reliance on a petition signed by 45 of 74 unit employees and stating that those employees no longer desired the Union's representation. Since that date, the Respondent has refused to recognize and bargain with the Union. The Respondent has also refused to provide relevant bargaining information requested by the Union in a June 10, 1992 letter.

The judge concluded that any challenge to the Union's majority status was precluded for 1 year after the Union's March 22 certification. He further found that the settlement agreement triggered an extension of the Respondent's bargaining obligation for a period of 4 months, the time between the May 2 withdrawal of recognition and the resumption of bargaining on August 29. Accordingly, he found that the Respondent was not privileged to withdraw recognition from the Union on March 26, 1992, regardless of its claimed good-faith doubt of the Union's majority status.

The Respondent has excepted to the judge's application of the certification year rule. It asserts that the rule should apply only to initial certifications. The Respondent also contends that the judge erred in finding that the settlement agreement extended the certification year even in the absence of express language to that effect in the agreement. We find no merit in either argument.

The certification year rule promotes peace and stability in industrial relations by providing at least 1 year from the date of certification of representation during which parties can negotiate a collective-bargaining agreement free from distraction.[3] Although the rule arose in the context of initial representation election campaigns, there is no basis in policy or precedent for limiting it to that context. As aptly stated by the judge, decertification elections can be more disruptive than initial campaigns to the collective-bargaining relationship. There is at least as great a need for a guaranteed postelection insular period in which the bargaining relationship can stabilize and succeed. Accordingly, we expressly affirm the Board's longstanding practice of applying the certification year rule in every instance in which the Board certifies a union after a representation election, regardless of whether the Board has previously certified that same union's representative status

[1] On June 15, 1994, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 363 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] *Brooks v. NLRB*, 348 U.S. 96 (1954). Our dissenting colleague cites *Brooks* in support of his view that the certification year rule should apply only to a newly established collective-bargaining relationship. Neither *Brooks* nor *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), limits the rule in this fashion. In fact, those cases make no mention of, much less focus on any special need to protect and nurture a new bargaining relationship. Both cases discuss reasons for the rule that apply to the period after *any election* in which unit employees have resolved a question concerning representation by casting a majority of votes for a union. See *Brooks*, supra at 99–100, and *Mar-Jac*, supra at 786–787.

for the same bargaining unit in a prior valid Board election.

Consistent with the above principles and the Union's new certification, the Union should have enjoyed an irrebuttable presumption of continuing majority status for the full year following March 22, 1991. The Respondent should have recognized and bargained with the Union throughout this period. It failed to do so. Instead, the Respondent triggered a hiatus in bargaining by withdrawing recognition on May 2, 1991. It settled unfair labor practice charges protesting this conduct by agreeing with the Region to ''upon request, meet and bargain with the Union . . . .''

The judge found, and we agree, that this agreement automatically triggered an extension of the certification year regardless of whether the express language of the agreement mentioned such an extension. By operation of law, an employer's promise to bargain in settlement of a refusal-to-bargain charge entails a promise to bargain for a ''reasonable time.''[4] In situations where the agreement settles charges alleging a refusal to bargain during the certification year, the Board has defined the reasonable time for bargaining by reference to the certification year and has extended that year to the extent deemed necessary to restore lost bargaining time to the aggrieved union. E.g., *Straus Communications*, 246 NLRB 846 (1976). To hold otherwise would permit an employer to take advantage of its own failure to fulfill a statutory obligation to engage in a full year of bargaining without challenge to the incumbent union's representative status. As the Respondent withdrew recognition from the Union during the extended certification year, it violated Section 8(a)(5) and (1) of the Act.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Americare-New Lexington Health Care Center, New Lexington, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

''(a) Upon request, bargain with the Union as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, for at least 6 months from the date it resumes bargaining with the Union as if the initial year of certification had not expired, and embody any understanding reached in a written agreement.

MEMBER COHEN, dissenting.

I do not agree that the ''certification year'' principle applies when an incumbent union wins a decertification election. The ''certification year'' principle is based on the premise that a newly established collective-bargaining relationship should be given a period of time in which to succeed, free from any attacks on the existence of the relationship.[1] Phrased differently, the newly born child should be given a chance to walk. Thus, for 1 year after certification, the Board will not permit the raising of a question concerning the majority status of the union. In essence, the value of protecting the new relationship prevails over the value of employee free choice.

My colleagues assert that there is no case support for the above rationale. In fact, there is ample support. As explained in *Ray Brooks v. NLRB*, 348 U.S. 96, the ''certification year'' rule began under the Wagner Act and continued under Taft-Hartley. One of the key elements underlying the rule was the principle that ''a union should be given ample time for carrying out its mandate . . . and should not be under exigent pressure to produce hothouse results or be turned out.''[2] This same principle applies to situations where the union wins bargaining rights pursuant to a settlement agreement, Board order, or voluntary recognition, albeit in these circumstances the period of time is a ''reasonable period'' rather than 1 year.[3] In explaining those principles in *Keller*, the Board cited *Ray Brooks* and quoted *Franks Bros. Co. v. NLRB*,[4] as follows:

> [A] bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.

In the instant case, the Union was entitled to a certification year after it won the original election in August 1987. The relationship was given a chance to succeed, and indeed it did succeed. A contract was agreed upon, effective from May 1, 1988, to April 30, 1991. However, by the end of that contract, the Union was no longer a newborn infant learning how to walk. It

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[4] Contrary to the Respondent's argument, there is no meaningful distinction in this regard either between precomplaint or postcomplaint settlements or between unilateral and bilateral settlement agreements.

[5] To remedy this violation, the judge recommended that the Respondent be required to bargain for a period of 4 months, representing the hiatus in bargaining during the certification year after the Respondent withdrew recognition on March 26, 1992. In accord with Board remedial precedent, we find that a 6-month extension of the certification year is necessary to remedy the effects of the Respondent's disruptions of negotiations. See *Colfor, Inc.*, 282 NLRB 1173 (1987). Accordingly, we will modify par. 2(a) of the judge's recommended Order to require the Respondent to bargain with the Union for 6 months from the resumption of bargaining.

[1] See *Ray Brooks v. NLRB*, 348 U.S. 96 (1954).

[2] Id. at 100.

[3] See *Keller Plastics Eastern*, 157 NLRB 583 (1966).

[4] 321 U.S. 702, 705–706 (1944).

had been the certified representative for approximately 3-1/2 years, and had achieved and administered a collective-bargaining agreement. Thus, the principle favoring free choice prevailed over the need to protect the relationship. Accordingly, a question concerning representation could be raised, and indeed it was raised. The Board conducted a decertification election in March 1991, and the Union was recertified on March 22. As stated supra, this was not the birth of a new relationship; it was the continuation of an established relationship. Thus, a new certification year was not created.

Respondent subsequently withdrew recognition on May 2, 1991. The case was informally settled on July 18. Bargaining resumed on August 29, 1991, and it continued until March 26, 1992. At that point, Respondent was presented with a petition signed by 45 of 74 employees, saying that they no longer desired union representation. Respondent withdrew recognition, based upon the petition.

My colleagues argue that the Union was entitled to a certification year from March 22, 1991. Since the Union received only about 8 months of bargaining (1 month in the spring of 1991 and 7 months from August 29, 1991, to March 26, 1992), the Respondent could not withdraw recognition as of the latter date, according to my colleagues.

For the reasons set forth above, I disagree with the ''certification year'' premise of my colleagues. On the other hand, I agree that the Union was entitled to a reasonable period of time for bargaining after the settlement agreement of July 18, 1991.[5] If the General Counsel had argued the point, I would be presented with the issue of whether that reasonable period continued beyond 8 months (July 18, 1991, to March 26, 1992). However, the General Counsel does not make this contention, choosing to rest entirely on the ''certification year'' principle. Since I disagree with that principle, as applied here, I would honor the employee choice shown on March 26, 1992, and I would permit the withdrawal of recognition.

[5] See *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952).

James E. Murphy, Esq., for the General Counsel.
David F. Byrnes, Esq., of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. On charges[1] filed by Bus, Sales, Truck Drivers, Warehousemen and Helpers, Local Union No. 637, affiliated with the International Brotherhood of Teamsters, AFL–CIO (the Union), on June 9 and November 20, 1992, the Regional Director for Region 9 of the National Labor Relations Board (the Board) issued complaints[2] alleging that Americare-New Lexington Health Care Center (the Respondent) committed certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed timely answers denying that it had committed any violation of the Act.

A hearing was held in New Lexington, Ohio, on March 19, 1993, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Union have been given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a corporation engaged in the operation of a nursing home in New Lexington, Ohio. During the 12-month period prior to June 1992, the Respondent, in conducting its operations, derived gross revenues in excess of $100,000 and purchased and received at its facility in New Lexington, Ohio, goods valued in excess of $10,000 directly from points outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the General Counsel previously filed Cross-Motions for Summary Judgment in this matter with the Board. On December 2, 1992, the Board issued an order denying Motions for Summary Judgment and remanding proceedings to Regional Director in which it stated that it found ''that the pleadings and motions raise factual and legal issues warranting a hearing before an administrative law judge.''

A. *The Certification Year Issue*

1. Undisputed facts

At the hearing, counsel for the parties entered into a stipulation of facts, providing:

1. The Union was certified as the exclusive collective-bargaining representative of the employees in a bargaining unit consisting of:

> All full-time and regular part-time nurses aides, rehabilitating aides, dietary aides, medical supply clerk, laundry aides, housekeeping aides, maintenance employee and medical records clerk/receptionist, but ex-

[1] The charge in Case 9–CA–29550 was filed on April 29, 1992, and that the charge in Case 9–CA–30063 was filed on October 16, 1992.

[2] The complaints were consolidated for hearing in an order dated December 30, 1992.

cluding all registered nurses and licensed practical nurses as supervisors within the meaning of the Act, bookkeeper, activities director, admissions coordinator, housekeeping and laundry supervisors, dietary supervisor, administrator, director of nursing, assistant director of nursing and all other guards, supervisors, professional employees and office clerical employees as defined in the Act.

An election was conducted in the above-referenced bargaining unit on June 4, 1987 (Case 9–RC–15096), and a certification of representative was issued by the Board on September 3, 1987.

2. The Respondent and the Union entered into a collective-bargaining agreement which covered the period between May 1, 1988, and April 30, 1991.

3. In or about February 1991, a decertification petition was filed by an employee in the bargaining unit. Pursuant to that petition, a decertification election was conducted under the supervision of the Regional Director for Region 9 of the Board, in the bargaining unit (Case 9–RD–1594). The Union received a majority of the votes in the decertification election, and on March 22, 1991, a certification of representative was issued by the Regional Director.

4. The Respondent and the Union met for the purposes of negotiating a successor collective-bargaining agreement on April 30, 1991.

5. On May 2, 1991, the Respondent, by Vice President of Human Resources Steven Romilo, withdrew recognition of the Union as the exclusive bargaining representative of its employees.

6. On May 13, 1991, the Union filed an unfair labor practice charge alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to bargain over the terms of a new collective-bargaining agreement, and by withdrawing recognition of the Union (Case 9–CA–28549).

7. By letter dated June 24, 1991, the Board agent assigned to investigate the case informed the Respondent that the Region intended to issue a complaint unless the Respondent agreed to enter into a settlement agreement which settled the Union's charge.

8. On June 27, 1991, the Respondent's representative executed the settlement agreement, which was enclosed with the Board agent's letter. The Union refused to enter into the settlement agreement, but it was approved by the Regional Director unilaterally on July 18, 1991. No complaint was ever issued by the Regional Director regarding the charge in Case 9–CA–28549. By letter dated July 23, 1991, Acting Regional Director Edward C. Verst informed the Union's attorney that the Region was refusing to issue a complaint in that matter in view of the undertakings contained in the settlement agreement.

9. The Union did not file an appeal of the Regional Director's actions with regard to the charge in Case 9–CA–28549 and the case was assigned to Compliance Supervisor William A. Maloney.

10. On August 29, 1991, the Respondent's representatives, Steve Ronilo and David Dixon, met with Union Representative Rodger Gable for the purposes of collective bargaining.

11. The parties continued negotiations from August 29, 1991, through March 1992.

12. The Respondent, by Administrator David M. Dixon, withdrew recognition of the Union as the exclusive bargaining representative of its employees in a letter dated March 26, 1992.

13. Since March 26, 1992, the Respondent has not recognized the Union as the exclusive bargaining representative of the employees at the New Lexington Health Care Center.

14. On April 29, 1992, the Union filed an unfair labor practice charge alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act by the conduct referred to in paragraphs 11 and 12, above (Case 9–CA–29550).

15. The charge in Case 9–CA–29550 was dismissed in part by the Acting Regional Director in a letter dated June 9, 1992.

16. On June 10, 1992, Rodger Gable forwarded a letter to David Dixon requesting that the Respondent furnish the Union with the names, addresses, telephone numbers and job classifications of all employees employed in the bargaining unit.

17. On October 16, 1992, the Union filed an unfair labor practice charge alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to furnish the information requested by the Union in the letter dated June 10, 1992 (Case 9–CA–30063).

2. Unagreed facts

The credible testimony of Union Representative Rodger Gable establishes that, following the Respondent's execution of the settlement agreement, he sent a letter dated July 2, 1991, to the Respondent representative, Steven Ronilo's stating the Union's desire to resume negotiations for a collective-bargaining agreement, listing several proposed dates for meeting, and enclosing the Union's contract proposals. On July 9, he had a telephone conversation with Administrator David Dixon concerning, inter alia, setting a date for resuming negotiations, in which Dixon said that the Company's first available date was August 29. Following approval of the settlement agreement, the Respondent, in compliance with the terms of the agreement, put back the union bulletin board in the breakroom. Gable also testified that he has received no reply to the June 10, 1992 request for information he sent to the Respondent.

David Dixon credibly testified that on March 26, 1992, he received an envelope in his office containing a petition signed by 47 employees, stating that they no longer wanted to be represented by the Union. After counting the signatures, he undertook to verify that the signers were still working for the Respondent. He checked various payroll records for the pay period ending March 17, 1992, and talked to supervisors to determine the number of employees in the bargaining unit as of that date and found that the total was 74. After establishing the number of employees in the bargaining unit and verifying the signatures on the petition, he concluded that a majority no longer wished to be represented by the Union. On the same date, he sent a letter to Rodger Gable informing the Union that he had received ''objective evidence'' that it no longer represented a majority of the employees and that the Respondent was withdrawing recognition as of that date. Dixon testified that after sending the letter to Gable he checked the payroll records for the next pay period ending March 31, 1992, to doublecheck the figures

and determined that a majority of the employees in the unit had signed the petition.[3]

Analysis and Conclusions

I find that the Respondent has established that it did have a good-faith doubt as to the Union's lack of majority support among the employees in the bargaining unit when it withdrew recognition on March 26, 1992. From all that appears that doubt was based on objective evidence consisting of the petition presented to Administrator Dixon on that date which contained valid signatures of not less than 45 of the 74 members of the unit and clearly stated that the signers no longer wanted to be represented by the Union. There is no evidence or allegation that the petition was in any way tainted by employer involvement or assistance.

The Respondent argues that this determination necessarily ends the matter because it was the only material issue of fact possibly in dispute when the Board considered and denied the Cross-Motions for Summary Judgment because there were ''factual and legal issues warranting a hearing.'' It contends that by so ruling the Board rejected the General Counsel's legal argument, otherwise, the question of the employer's good-faith doubt would have been immaterial because, according to that argument, withdrawal of recognition was precluded even if a majority of the unit employees no longer supported the Union. It contends that the Board's rejection of the General Counsel's position is the law of the case. I do not agree. The Board's ruling on the motions was interlocutory in nature and subject to reconsideration and change until it has made its final decision in this case. Moreover, had it intended its ruling to constitute a conclusive rejection of the General Counsel's legal argument, it undoubtedly would have clearly said so.

It is well settled that where a union has been initially certified as the result of a Board-conducted election, under Board rule, it is entitled to a certification year in which challenges to its majority status are precluded, and any refusal to bargain based on such a challenge is unlawful. E.g., *Ray Brooks v. NLRB*, 348 U.S. 96 (1954); and *Straus Communications*, 246 NLRB 846 (1979). This is because ''a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.'' *Franks Bros. v. NLRB*, 321 U.S. 702, 705 (1944). The question here is whether the Union was entitled to a certification year by reason of its victory in the decertification election held among the bargaining unit employees on March 14, 1991. Counsel for the General Counsel contends that it was and that the certification year was extended for a period equal to that during which the Respondent unlawfully refused to bargain. The Respondent contends that this results in a second certification year for the Union and that the certification year rule applies only in situations where a union is initially certified. It further argues that the bargaining relationship involved here had over 4 years to succeed and there is no reason in law or equity to grant the Union a second certification year.

In *John Vilicich*, 133 NLRB 238 (1961), the Board dismissed a petition for an election because an existing contract constituted a bar. It also stated that even in the absence of a contract bar the petition would be untimely as it was filed during a certification year. The Board's decision in *Fisherman's Cooperative Assn*., 128 NLRB 62 (1960), establishes that the certification referred to in *John Vilicich*, resulted from a decertification election victory by labor organization Seine and Line which, at the time the decertification petition was filed, was the then currently certified and recognized bargaining representative of the unit involved. There is no significant difference in the situation involved here. The Respondent has cited no authority in support of its contention that a certification year only applies where a union is initially certified. *John Vilicich* establishes that it is the union's victory in a valid Board-conducted election that gives rise to a certification year not the fact that it is its initial certification. A decertification election campaign may create as much turmoil and disruption as an initial organizing campaign. There is no reason that a union that is successful in winning such an election should not enjoy the same freedom from challenges to its majority status as one winning a representation election since the need for an opportunity for the bargaining relationship to stabilize and succeed may be just as great. ''[S]ecret ballot elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.''[4] Consequently, it would make little sense to say that after the Union won the decertification election it could not be forced into another election for 1 year, by reason of the statutory bar in Section 9(c)(3), but that the Respondent could withdraw recognition on the basis of an employee petition before that year was up. I find that any challenge to the Union's majority status was precluded from 1 year from March 22, 1991, the date that the certification issued.

After participating in one bargaining session following the certification, on May 2, 1991, the Respondent withdrew recognition of the Union in a letter in which it stated that it had objective evidence that it no longer represented a majority of the employees in the bargaining unit. The Union filed an unfair labor charge with the Board and after a Board agent informed the Respondent that a complaint would be issued, it executed a settlement agreement on June 27, 1991. By the terms of the agreement the Respondent agreed, inter alia, to recognize and bargain in good faith with the Union. Although the Union did not agree to this settlement, it was unilaterally approved by the Regional Director on July 18, 1991. The next negotiating session between the parties was held on August 29.

Board law is clear that where a settlement agreement resolves allegations of a refusal to bargain in a certification year the certification will be extended to assure that there is a full year of actual bargaining. E.g., *Vantran Electric Corp*., 231 NLRB 1014 (1977); *Mar-Jac Poultry Co*., 136 NLRB 785 (1962). In the present case there was no bargaining because of the Respondent's withdrawal of recognition between May 2 and August 29, 1991, a period of approximately 4 months.[5] Therefore, the certification year was extended by 4

[3] Counsel for the General Counsel has stipulated that there were 74 employees in the bargaining unit on March 26, 1992, and that there are genuine signatures of 45 employees on the petition.

[4] *NLRB v. Gissel Packing Co*., 395 U.S. 575, 602 (1969).

[5] The evidence does not establish that the Union was responsible for or concurred in the delay in returning to the bargaining table. The uncontradicted testimony of Gable establishes that the Union proposed several dates in July and early August on which to meet;

months until July 22, 1992. However, the Respondent again withdrew recognition on March 26, 1992. I find there is no merit in the Respondent's contention that the certification year was not extended because the settlement agreement did not specifically so provide. The Board made it clear in *Mar-Jac Poultry Co*. that a settlement of an 8(a)(5) refusal-to-bargain charge in which the employer agreed to bargain in good faith would operate to extend the certification year to assure that there was at least 1 full year of actual bargaining. The settlement agreement here had that effect as a matter of law. As stated in *Straus Communications*, supra at 847–848:

> Where, however, the certification year is interrupted by litigation of 8(a)(5) unfair labor practice charges, the company ''is obligated to bargain . . . for a reasonable period of time exclusive of the period during which the bargaining relationship was suspended by litigation of the . . . unfair labor practices.'' Once the litigation is resolved, whether by a Board order or a non-Board settlement agreement, the certification year will be extended ''to embrace that time in which the employer has engaged in its unlawful refusal to bargain.''
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> Accordingly, from the time of the settlement agreement, the parties were entitled to and required to bargain for that portion of the certification year to which the Union still was entitled free of any encumbrances. Because Respondent withdrew recognition from the Union during the certification year, as extended, it violated Section 8(a)(5) and (1) of the Act. [Fns. omitted.]

I find that the same conclusion must be reached here.

B. *The Union's Request for Information*

The Respondent admits that it did not provide the information the Union requested in Gable's letter of June 10, 1992, and apparently does not dispute that such information would be relevant and of use to the Union in the performance of its duties as the unit employees collective-bargaining representative. Its refusal to provide the information was based on its contention that at the time of the request the Union no longer enjoyed such status. Resolution of that issue in favor of the Union necessarily results in a finding that the Respondent violated Section 8(a)(5) and (1) by failing to provide the information requested. *NLRB v. Truitt Mfg. Co*., 351 U.S. 149, 152 (1956); *Barnard Engineering Co*., 282 NLRB 617, 619 (1987)

CONCLUSIONS OF LAW

1. The Respondent, Americare-New Lexington Health Care Center, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time nurses aides, rehabilitating aides, dietary aides, medical supply clerk, laundry aides, housekeeping aides, maintenance employee and medical records clerk/receptionist, but excluding all registered nurses and licensed practical nurses as supervisors within the meaning of the Act, bookkeeper, activities director, admissions coordinator, housekeeping and laundry supervisors, dietary supervisor, administrator, director of nursing, assistant director of nursing and all other guards, supervisors, professional employees and office clerical employees, as defined in the Act, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act.

4. At all times material since March 22, 1991, the Union has been and now is the certified and exclusive bargaining representative of all employees in the above appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from, and by refusing on March 22, 1992, and at all times thereafter, to bargain collectively with the Union as the exclusive bargaining representative of all employees in the appropriate unit, the Respondent violated Section 8(a)(5) and (1) of the Act.

6. By refusing to provide the Union with information relevant and necessary for the proper administration of its duties as the collective-bargaining representative of its employees, the Respondent violated Section 8(a)(5) and (1) of the Act.

7. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on March 26, 1992, and thereafter refusing to meet and bargain with it, I shall recommend that it be ordered to cease and desist from withdrawing recognition and refusing to recognize the Union and to bargain collectively, on request, with the Union as the exclusive representative of its employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

There should have been bargaining for at least 1 year following the certification on March 22, 1991, and for a reasonable time after the settlement agreement. The reasonable period of time should compensate for the failure to bargain during any period of the certification year. The Respondent withdrew recognition and refused to bargain with the Union on May 2, 1991. Bargaining did not resume pursuant to the settlement agreement until August 29, 1991, a period of approximately 4 months and the certification year was extended for a comparable period. Because the Union was not accorded a full certification year, as extended, before the Respondent again withdrew recognition on March 26, 1992, it should be required to bargain for a period of 4 months, commencing on the date the Respondent and the Union resume bargaining and, if an agreement is reached, to embody it in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

but, on July 9, Dixon informed him that the Respondent would not be available before August 29.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Americare-New Lexington Health Care Center, New Lexington, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to meet and bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union as the exclusive bargaining representative of all employees in the appropriate unit.

(b) Refusing to bargain collectively with the Union by failing to provide relevant information on request.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, for the period of time specified in the remedy section of this decision and, if an agreement is reached, embody it in a signed agreement.

(b) On request, furnish to the Union all information requested in its letter of June 10, 1992.

(c) Post at its facility in New Lexington, Ohio, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from and refuse to meet and bargain collectively with the Union as the exclusive representative of all employees in the appropriate bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by refusing to supply relevant information on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

WE WILL, on request, furnish to the Union the information requested in its letter of June 10, 1992.

AMERICARE-NEW LEXINGTON HEALTH CARE CENTER